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8	BEFORE THE	
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
10		CALIFORNIA
11	In the Matter of the Accusation Against:	Case No. 2011- 880
12		
13	WENDY MARIE HAWKINS 32134 Cala Torrente Torrente CA 92592	ACCUSATION
14	Temecula, CA 92592	,
15	Registered Nurse License No. 520622	
16	Respondent.	·
17		
18	Complainant alleges:	
19	PARTIES	
20	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
22	Consumer Affairs.	
23	2. On or about March 25, 1996, the Board of Registered Nursing issued Registered	
24	Nurse License Number 520622 to Wendy Marie Hawkins (Respondent). The Registered Nurse	
25	License was in full force and effect at all times relevant to the charges brought herein and will	
26	expire on November 30, 2011, unless renewed.	
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### **JURISDICTION**

- 3. This Accusation is brought before the Board of Registered Nursing (Board),
  Department of Consumer Affairs, under the authority of the following laws. All section
  references are to the Business and Professions Code (Code) unless otherwise indicated.
- 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

#### STATUTORY PROVISIONS

# 6. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a licensee for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

# 7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following. . . .
- 8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. 11		
1	(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or	
3	herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.	
4		
5	9. Section 4022 of the Code states	
6	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:	
7 8	(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.	
9	(b) Any device that bears the statement: "Caution: federal law restricts this	
10	device to sale by or on the order of a," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.	
11	(c) Any other drug or device that by federal or state law can be lawfully	
12	dispensed only on prescription or furnished pursuant to Section 4006.	
13	10. Section 4060 of the Code states, in pertinent part, that no person shall possess any	
14	controlled substance, except that furnished to a person upon the prescription of a physician,	
15	dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor	
16	REGULATORY PROVISIONS	
17	11. California Code of Regulations, title 16, section 1445 states:	
18		
18 19	(b) When considering the suspension or revocation of a license on the grounds	
	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the	
19	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:	
19 20	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:  (1) Nature and severity of the act(s) or offense(s).	
19 20 21	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:  (1) Nature and severity of the act(s) or offense(s).  (2) Total criminal record.	
19 20 21 22	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:  (1) Nature and severity of the act(s) or offense(s).  (2) Total criminal record.  (3) The time that has elapsed since commission of the act(s) or offense(s).	
19 20 21 22 23	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:  (1) Nature and severity of the act(s) or offense(s).  (2) Total criminal record.	
19 20 21 22 23 24	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:  (1) Nature and severity of the act(s) or offense(s).  (2) Total criminal record.  (3) The time that has elapsed since commission of the act(s) or offense(s).  (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.  (5) If applicable, evidence of expungement proceedings pursuant to Section	
19 20 21 22 23 24 25	that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:  (1) Nature and severity of the act(s) or offense(s).  (2) Total criminal record.  (3) The time that has elapsed since commission of the act(s) or offense(s).  (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.	

17.

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### **DRUG**

13. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022.

#### **FACTS**

- 14. On or about the morning of June 3, 2010, Respondent and her ten-year-old son were passing through the security screening at the Ontario International Airport in San Bernardino County. A TSA security officer screened Respondent's purse and located inside a make-up bag a glass pipe, a foil pipe, and a small, brown glass bottle with a black top. Respondent told the officer that the items belonged to her, and that the small glass bottle contained methamphetamine ("It's meth. It's mine. I've got a problem and I want it to stop.") The Ontario Police Department arrested Respondent for possession of a controlled substance, under the influence of a controlled substance, and possession of controlled substance paraphernalia. Respondent's 10-year-old son was retrieved by his father at the airport.
- Wendy Marie Hawkins, in San Bernardino County Superior Court, case number MWV1003527, Respondent pled guilty to violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, to wit, methamphetamine; and Health and Safety Code section 11364, subdivision (a), possession of controlled substance paraphernalia. As a result of the plea, the court deferred entry of judgment for a period of 18 months and Respondent was ordered to enroll in a drug treatment program pursuant to Penal Code section 1000. The court will withdraw the guilty plea and dismiss the charges if Respondent provides proof of successful completion of the drug program on or before April 17, 2012.

# 1 3 4 5 6 4060 of the Code. 7 8 9 10 11 1. Marie Hawkins: 12 2. 13 14 Professions Code section 125.3; 15 16 17 18 19 20 21 22 23 SD2011800026 80492507.doc 24

# **CAUSE FOR DISCIPLINE**

# (Unprofessional Conduct – Illegal Possession of a Controlled Substance & Paraphernalia)

Respondent is subject to disciplinary action under section 2761, subdivision (a) and section 2762, subdivision (a) of the Code for unprofessional conduct, in that on or about October 12, 2010, as described in paragraph 14, above, Respondent possessed methamphetamine and paraphernalia used to smoke methamphetamine without a prescription in violation of section

#### PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- Revoking or suspending Registered Nurse License Number 520622, issued to Wendy
- Ordering Wendy Marie Hawkins to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
  - 3. Taking such other and further action as deemed necessary and proper.

Board of Registered Nursing Department of Consumer Affairs

State of California

Complainant

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